ARAB MALAYSIAN MERCHANT BANK BHD.

v.

SIN HIAP ENTERPRISE

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[SUIT NO. D2-24-718-86]
8 DECEMBER 1988

CONTRACT: *Factoring agreement - Assignment of book debts - Notice of factoring agreement - Debtor's awareness of assignment of debt - Whether issue of suitability of goods sold/delivered affects factoring agreement - Whether allegation of fraud between defendant's employee and assignor of debt affects factor - Whether debtor, can invoke factoring agreement to escape liability.*

This was an appeal by the plaintiff against the decision of the Senior Assistant Registrar who dismissed their O. 14 application with costs. The cause of action arises from a factoring agreement between the plaintiff and "FYE" whereby FYE's book debts were assigned to the plaintiff. The defendant was formally notified of the factoring agreement that it was to make payment directly to the plaintiff. The defendant failed to pay a debt which was due and the plaintiff filed a suit followed by an O. 14 application.

The issues raised by the defendants were that the goods that they purchased were not suitable for their line of business and as such, they cannot be held liable, and that there was a conspiracy to defraud between the defendant's employee and a director of FYE. Further, the defendant attempted to invoke a clause of the factoring agreement to escape liability by asserting that the plaintiff should sue FYE instead for the debt.

Held:

[1] Under a factoring agreement, the customer's duty to pay the factor arises when he receives notice of the assignment and he must regard the factor as his creditor so far as the assigned debt is concerned.

[2] The suitability or otherwise of the goods sold and delivered has no bearing on the defendants liability and they were therefore liable to the plaintiff who purchased FYE's book debts which is the basis of the credit factoring.

[3] The issue of fraud is of no concern to the plaintiff who were not a party to it.

[4] In this case, the defendants liability arises upon receipt of the letter of notification.

[5] The defendant being a stranger to the factoring agreement cannot invoke the agreement to escape liability.

[Appeal allowed with costs.]

For the appellant - K. Tan; M/s. Kadir, Tan & Ramli
For the respondent - K.L. Low; M/s. Arifin & Partners

JUDGMENT

Siti Norma Yaakob J:

The cause of action in this suit arises from a factoring agreement dated 26 July 1985, executed by the plaintiff with a company called Fung Yen Enterprise (M) Sdn. Bhd. from which the plaintiff purchased all of Fung Yen's book debts in consideration of the plaintiff providing factoring facilities to Fung Yen. For all practical purposes, the factoring agreement is an assignment of all Fung Yen's debts to the plaintiff.

As at 31 December 1985, there was a balance of RM53,725 due to Fung Yen from one of its customers, the defendant, being the purchase price for goods sold and delivered. Receipt of the deliveries of the goods is acknowledged by the defendant in 3 delivery orders dated 29 April 1985, 5 July 1985 and 20 July 1985, and they had 60 days upon delivery to make payment. Fung Yen also invoiced the defendant for such goods.

By its letter of notification dated 5 July 1985, Fung Yen then notified the defendant that following its arrangement with the plaintiff, the defendant was to make payment of the sums due on the invoices directly to the plaintiff. The defendant acknowledged receipt of this notification by confirming their awareness of the factoring arrangement Fung Yen had with the plaintiff as well as the sum due from them.

The defendant, however, did not pay the debt due to the plaintiff at the end of the 60 day credit grace and following the filing of this suit, an application for summary judgment under O. 14 came before the Senior Assistant Registrar who dismissed it with costs. It is against this order that the plaintiff has now appealed to me.

In their affidavits opposing the O. 14 application the defendant raised 2 issues:

(1) The nature of the goods purchased is not suitable for their line of business and as such, they cannot be held liable.

(2) The delivery orders, invoices and letter of notification were acknowledged by their cashier, one Lim Sok Eng (f), who firstly had no authority to do so and secondly, she had conspired with a director of Fung Yen by forging the defendant's signature on the documents in an attempt to assist Fung Yen in their cash flow problems. The defendant contend that there was in fact no delivery as the acknowledgments of receipt were fictitious.

The goods sold and delivered were light fittings but I do not consider that the nature of the goods has any bearing on the defendant's liability as what the plaintiff had agreed to, under the factoring agreement, is to purchase Fung Yen's book debts and this is the basis of the credit factoring.

As for the allegation of fraud on the part of the cashier of the defendant company and Fung Yen, this is of no concern to the plaintiff as the plaintiff are not a party to it. In any event the plaintiff's cause of action is founded on the factoring agreement and the law is that the customer's duty to pay the factor arises when he receives notice of the assignment. As from that moment if he ignores such a notice, he does so at his peril and he must regard the factor as his creditor so far as the assigned debt is concerned.

In this case the defendant had acknowledged receipt of the letter of notification and even assuming that the defendant's stamp and signature on the letter have not been duly authorised by the defendant, this is of no concern to the plaintiff as the defendant's liability arises upon receipt of the letter of notification.

The defendant also attempted to invoke cl. 12(i) of the factoring agreement to escape liability by asserting that the plaintiff should sue Fung Yen instead for the debt. Here again the defendant must fail as the factoring agreement was executed between the plaintiff and Fung Yen and being a stranger to the agreement, the defendant cannot invoke the agreement to escape liability.

As there are no triable issues on the O. 14 application, I had accordingly allowed the plaintiff's appeal with costs.

Also found at [1989] 2 CLJ 980